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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re R. C., A Person Coming Under the
Juvenile Court Law.

B237128
(Los Angeles County
Super. Ct. No. GJ29084)

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

R. C.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Philip L. Soto, Judge. Affirmed.

Holly Jackson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Louis W. Karlin and Tita Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

The juvenile court sustained a petition alleging that appellant R. C. engaged in second degree robbery. He contends there is insufficient evidence to support this determination. We affirm.

RELEVANT PROCEDURAL BACKGROUND

On July 22, 2011, the District Attorney of Los Angeles County filed a petition under Welfare and Institutions Code section 602, charging appellant with a single count of threatening a witness (Pen. Code, § 140, subd. (a)). Appellant denied the charge.

On September 7, 2011, the District Attorney filed a second petition under Welfare and Institutions Code section 602, charging appellant with a single count of second degree robbery (Pen. Code, § 211). Accompanying the charge was an allegation that appellant personally used a deadly and dangerous weapon during the offense (Pen. Code, § 12022, subd. (b)(1)). Appellant denied the charge.

Following a contested hearing regarding the September 2011 petition, the juvenile court sustained the charge of second degree robbery, but found the weapon use allegation not to be true. Shortly afterward, the July 2011 petition was amended to allege a misdemeanor offense of threatening a witness, to which appellant pleaded no contest. The court declared appellant to be a ward of the court, removed him from parental custody, and ordered that he be suitably placed. The court set appellant's maximum term of confinement at five years.

FACTUAL BACKGROUND

A. Prosecution Evidence

On August 20, 2011, after shopping in Old Town Pasadena, Araceli V. and Gabriela S. walked toward a Metro station to take a train home. Approximately two blocks from the station, they noticed appellant and his brother on razor

scooters following them. Araceli and Gabriela moved aside to let them pass, but they did not do so.

Araceli testified that she carried her cell phone in her hand as she walked. When she neared the station, someone behind her took the phone from her hand. She turned and saw appellant holding her phone while moving away on his scooter. She caught up with appellant, who stopped to confront her. Appellant's brother soon arrived on his scooter and stood near Araceli. When Araceli demanded that appellant return her phone, he said nothing and tossed the phone to his brother. The pair passed the phone back and forth and laughed. After appellant regained possession of the phone, he began to move away from Araceli, who repeatedly asked for the phone. He stopped and said, "I don't have your phone, but I have this." He then lifted his shirt to display what appeared to be the black handle of a gun tucked under his waistband. Fearful that appellant might use the gun, Araceli backed away from him. She stopped chasing appellant and made a 911 call with Gabriela's cell phone.

Gabriela testified that as she entered the station, she heard Araceli scream, "Give me back my phone." She turned and saw Araceli chasing two males on razor scooters. As she followed Araceli, she saw the two males passing a phone back and forth. Although she heard the pair laughing, she neither heard what they said to Araceli nor saw appellant's pertinent conduct when Araceli spoke to him.

On September 2, 2011, Pasadena Police Department Detective Carolyn Gordon conducted a search of appellant's home. In the bedroom that appellant and his brother shared, she found a "BB" gun resembling a handgun with a black handle.

B. *Defense Evidence*

Appellant presented no evidence.

DISCUSSION

Appellant contends there is insufficient evidence to support the juvenile court's determination that he committed second degree robbery. He argues that the court's rejection of the weapon use allegation "call[s] into question" the determination regarding the robbery. As explained below, we disagree.

"The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] [¶] Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.] Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder. [Citations.]' [Citation.]" (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.)

"Robbery is the taking of personal property in the possession of another from his person or immediate presence, against his will, accomplished by means of force or fear. (§ 211.)" (*People v. Bonner* (2000) 80 Cal.App.4th 759, 763.) The taking of property by force or fear "includes forcing or frightening a victim into leaving the scene, as well as simply deterring a victim from preventing the theft or attempting to immediately reclaim the property." (*People v. Flynn* (2000) 77 Cal.App.4th 766, 771.) Generally, "the force necessary to elevate a theft to a

robbery must be something more than that required to seize the property.” (*People v. Anderson* (2007) 152 Cal.App.4th 919, 946.) However, robbery can be accomplished through fear alone, without the use of actual force. (*People v. Brew* (1991) 2 Cal.App.4th 99, 104 (*Brew*).) “““The element of fear for purposes of robbery is satisfied when there is sufficient fear to cause the victim to comply with the unlawful demand for [her] property.”” [Citation.] . . . “[T]he fear necessary for robbery is subjective in nature, requiring proof “that the victim was in fact afraid, and that such fear allowed the crime to be accomplished.”” [Citation.]” (*People v. Bordelon* (2008) 162 Cal.App.4th 1311, 1319.) The fear need not be the result of an express threat. (*People v. Flynn, supra*, 77 Cal.App.4th at p. 771; *Brew, supra*, 2 Cal.App.4th at p. 104.)

An instructive application of these principles is found in *Brew*. There, the defendant approached a cashier in a market, stood very close to her, and then moved into her work area without touching her. (*Brew, supra*, 2 Cal.App.4th at p. 103.) The defendant’s size and conduct caused the cashier to retreat from her register in fear, which permitted him to seize some cash. (*Ibid.*) The appellate court concluded there was sufficient evidence to support the defendant’s conviction for robbing the cashier, even though there was no evidence that he had a weapon or that he assaulted or verbally threatened her. (*Id.* at p. 104.)

In view of *Brew*, there is ample evidence that appellant engaged in robbery, notwithstanding the juvenile court’s determination that he used no handgun when he took Araceli’s cell phone. Araceli testified that when she demanded her cell phone, he said, “I don’t have your phone, but I have this,” and displayed what appeared to be a handgun. Motivated by fear that appellant might shoot her, she backed off, thus enabling appellant to retain her phone. This testimony was sufficient to establish robbery by means of fear.

Appellant suggests that Araceli’s testimony cannot show the existence of a

robbery because Gabriela did not corroborate the testimony. However, “absent physical impossibility or inherent improbability, the testimony of a single eyewitness is sufficient to support a criminal conviction. [Citation.]” (*People v. Allen* (1985) 165 Cal.App.3d 616, 623.) No such extraordinary circumstances are present here. In sum, there was sufficient evidence to support the determination that appellant committed second degree robbery.

DISPOSITION

The orders of the juvenile court are affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.